

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH
MUMBAI**

BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER

**ITA No.67/Mum/2019
(Assessment Year: 2013-14)**

M/s Record Investments & Leasing Pvt. Ltd., 92, Maker Chambers VI, 220, Nariman Point, Mumbai- 400021.	Vs.	I.T.O. Ward 3(3)(1), Mumbai.
PAN/GIR No.AACR 7607 M		
(Appellant)	..	(Respondent)

Assessee by	Shri H.S. Raheja (AR)
Revenue by	Shri Akhtar H Ansari (DR)
Date of Hearing	13/01/2020
Date of Pronouncement	21/01/2020

आदेश / O R D E R

PER: R.C. SHARMA, A.M.

This appeal by the assessee is directed against the order dated 22/11/2018 of Id. CIT(A)-08, Mumbai for the A.Y. 2013-14 in the matter of order passed u/s 143(3) of the Income Tax Act, 1961 (in short, the Act) wherein addition of Rs. 10,00,808/- was made by invoking provisions of Section 23(2) of the Act assessing ALV of the flat at Apsara Cooperative Housing Society, NCPA, Nariman Point, Mumbai.

2. Rival contentions have been heard and record perused. Facts in brief are that the assessee is a company and filed its return of income

on 24/09/2013 declaring income of Rs. 1,26,340/- as income from other sources on account of interest income on fixed deposit since the assessee has not been able to do any business. The share holders of the assessee company are two in numbers and both are non-residents. During the course of scrutiny assessment, the A.O. made addition on account of notional value of flat owned by the assessee company. The A.O. observed at para 4.5 that since the Director's Passport shows the address of flat B-29 in Sterling Apartments, Peddar Road, Mumbai 400026, the return of income shows the address as 26, Silk house, 6390 Girgaum Road, Mumbai 400002, and the return of the Company shows the address of the Director as B27 Sterling Apartments, Peddar Road, Mumbai 400026, it stands concluded that the Director already has a residential house and that no evidence has been furnished that the premises of the company at Apsara CHS Ltd., NCPA is used by the Director. Accordingly the A.O. held that the premises is not used for business purpose and hence income from house property has to be computed as assessable u/s 23(1) of the Act. The assessee objected to the same and submitted that both flat B27 and B29 at Sterling belonged to the Director's brother Mr. Suresh Kewalramani, and the said address was on the old passport being the address of communication since the Director was a non resident. Similarly it was explained that the address of 26, Silk

house, 630 Girgaum Road, Mumbai 400002 was an office premises which belonged to Kewalramani Bros. a proprietary concern of Mr. Suresh Kewalramani. It was further explained that the proof of residence of Mr. Chandroo Kewalramani, Director of the Company at the Apsara C.H.S. Ltd., NCPA premises of the company was as under:-

- i. Copy of Board Resolution confirming that the flat is being occupied by the Director has already been filed vide submission dated 23/02/2016.
- ii. Copy of ledger account of the assessee evidencing the fact that payments for the society and utility bills have been reimbursed by Mr. Chandroo Kewalramani have already been filed earlier along with copies of the bills.
- iii. Evidence of the Gas connection in the said flat stands in the name of Mr. Chandroo Kewalramani at the referred address is annexed herewith.
- iv. Letter from the Society confirming that Mr. Chandroo Kewalramani, Director of the Company occupies the referred flat is annexed herewith.
- v. Various invoices and AMC and service receipts evidencing the stay of Mr. Chandroo Kewalramani in the flat are also annexed herewith.

However, the A.O. did not agree with the assessee's contention and made addition U/s 23(1) amounting to Rs. 10,00,808/-. By the impugned order, the Id. CIT(A) has confirmed the action of the A.O., against which the assessee is in further appeal before the ITAT.

3. I have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record that the assessee company was owning a flat. Only letting value of the same was taxed by the A.O. U/s 23(1) of the Act. As per Section 23(4), where the property consists of a house which is in the occupation of the owner for purposes of his own residence, the annual value of such house shall be taken to be Nil, since the provision applies to companies as well since the applicability of Section 23 is to an assessee and not to an individual. The A.O. had declined the assessee's claim on the plea that the assessee company has not carried out any business and that the assessee had claimed depreciation which is being disallowed and that use by the Director is an afterthought. Thereafter the A.O. wrongly applied the decision of the Hon'ble Bombay High Court in the case of M/s Tip Top Typography and obtained the annual value from municipality and thus, determined the same at Rs. 14,730/- per month. In support of the contention that the flat was given to the Director for residence as well as for carrying on business therein, the Id. AR also pointed out that the Inspector of the department also visited the building wherein it was found that the flat is used for his residence. It was also contended that the assessee has called for the report of the Inspector,

however, the same was not supplied to the assessee nor it finds mentioned in the A.O's order.

4. This is evident from the fact that the A.O. has in spite of all the irrefutable evidence furnished to show that the non resident Director does not have a place of residence in India and that he stays in the company premises, whenever he visits India and the fact that he has paid for the electricity and society maintenance etc. and further the confirmation from the society of his stay in the premises which was verified by the Inspector secretly, initially issue a show cause to make an addition of Rs. 2,01,26,880/-.

5. The A.O., on one hand, stated that the assessee is not entitled to claim that the property is self occupied since it is a business asset and has on the other hand contradicted his own stand to hold that the assessee is liable to be assessed on the basis of notional income based on the Municipal Rateable value.

6. From the record, I found that the flat is a business asset used partly for business and partly for the residence of both the shareholder Directors. Since the flat was a business asset and given to the Director of the company for his residence, the same cannot be brought to tax U/s 23 of the Act in terms of following the various judicial pronouncements.

- (i) DCIT Vs Prabhukripa Overseas Ltd. ITA No. 1092 & 1093/Kol/2011
- (ii) CIT Vs Vazir Sultan Tobacco Co. Ltd. 173 ITR 290 (AP)
- (iii) CIT Vs New India Maritime agencies P Ltd. 207 ITR 392 (Mad).

7. In view of the above facts and circumstances, I do not find any merit in the action of the A.O. for taxing the flat owned by the assessee company U/s 23(1) of the Act. Hence, I direct to delete the same.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 21st January, 2020.

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 21/01/2020

*Ranjan

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai